

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
In re SONY BMG CD TECHNOLOGIES	:	Civil Action No. 1:05-cv-09575-NRB
LITIGATION	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	DECLARATION OF REED R. KATHREIN,
	:	ESQ. IN SUPPORT OF THE RICCIUTI
ALL ACTIONS.	:	CLASS REPRESENTATIVES'
	:	MEMORANDUM OF LAW IN SUPPORT
	X	OF MOTION FOR AN AWARD OF
		ATTORNEYS' FEES AND
		REIMBURSEMENT OF EXPENSES

I, REED R. KATHREIN, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, one of the counsel of record for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. This firm is counsel of record for plaintiffs Tom Ricciuti, Yvonne Ricciuti, Mary Schumacher, Robert Hull, Joseph Halpin, Edwin Bonner, and Erin Melcon.

3. Attached are true and correct copies of the following exhibits:

Exhibit 1: The details of Internet traffic to [www.alex.com](http://www.alex.com/data/details/traffic_details?&range=6m&size=medium&compare_sites=&y=r&url=eff.org), available at http://www.alex.com/data/details/traffic_details?&range=6m&size=medium&compare_sites=&y=r&url=eff.org (last visited April 1, 2006);

Exhibit 2: The traffic details of web traffic to www.sonybmg.com, available at http://www.alex.com/data/details/traffic_details?q=&url=sonybmg.com (last visited April 1, 2006);

Exhibit 3: Résumé of Lerach Coughlin Stoia Geller Rudman & Robbins LLP;

Exhibit 4: Sony BMG press release dated June 30, 2003, entitled “BMG and Sunncomm Technologies Ink Worldwide Licensing Deal To Protect and Enhance Audio CDs For Global Music Giant,” available at http://www.bmg.com/news/articles/artists_article_030630.html (last visited March 30, 2006);

Exhibit 5: An Electronic Frontier Foundation (“EFF”) article entitled, “Uproot Sony-BMG’s Invasion of Your Privacy and Your Computer,” dated November 3, 2005, posted by Jason Schultz and available at <http://www.eff.org/deeplinks/archives/004117.php> (last visited April 1, 2006);

Exhibit 6: An EFF article entitled, “Are You Infected by Sony-BMG’s Rootkit?,” dated November 9, 2005, posted by Fred von Lohmann and available at <http://www.eff.org/deeplinks/archives/004144.php> (last visited April 1, 2006);

Exhibit 7: An EFF article entitled, “Now the Legalese Rootkit: Sony-BMG’s EULA,” dated November 9, 2005, posted by Fred von Lohmann and

available at <http://www.eff.org/deeplinks/archives/004145.php> (last visited April 1, 2006);

- Exhibit 8: A letter dated November 14, 2005 written by the EFF and Robert S. Green of Green Welling LLP to Daniel M. Mandil of Sony BMG Music Entertainment, Howard Stringer of Sony Entertainment, and Gunter Thielen of Bertelsmann AG regarding “Notice Under California Consumers Legal Remedies Act, Civil Code Sections 1750, *et seq.* and California’s Unfair Competition Law, Business and Professional [sic] Code Section 17200”;
- Exhibit 9: An Open Letter to Sony-BMG dated November 14, 2005, written by the EFF to Andrew Lack of Sony-BMG, Rolf Schmidt-Holtz of Sony-BMG, Howard Stringer of Sony Entertainment, and Gunter Thielen of Bertelsmann AG, available at <http://www.eff.org/IP/DRM/Sony-BMG/?f=open-letter-2005-11-14.html> (last visited April 1, 2006);
- Exhibit 10: An e-mail dated November 17, 2005 at 1:12:39 PM PST from Cindy Cohn of EFF to Jeff Cunard of Debevoise & Plimpton LLP regarding “Suncomm [sic] uninstaller vulnerability”;
- Exhibit 11: An e-mail dated November 17, 2005 at 2:39:21 PM PST from Jeffrey P. Cunard of Debevoise & Plimpton LLP to Cindy Cohn of EFF regarding “Suncomm [sic] uninstaller vulnerability”;
- Exhibit 12: A letter dated November 17, 2005 from the EFF and Robert S. Green of Green Welling LLP to Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding Sony-BMG;
- Exhibit 13: A letter dated November 18, 2005 from Jeffrey P. Cunard of Debevoise & Plimpton LLP to Robert S. Green of Green & Welling LLP regarding “Demand Letter to Sony BMG Music Entertainment”;
- Exhibit 14: A letter dated January 11, 2006 from Jeffrey S. Jacobson of Debevoise & Plimpton LLP to the Honorable Bill Lockyer, Attorney General of California regarding “Notice of Proposed Class Action Settlement” in *In re Sony BMG CD Technologies Litigation*;
- Exhibit 15: Complaint entitled *Robert Hull, Joseph Halpin and Edwin Bonner v. Sony BMG Music Entertainment Corp., Sony Corporation of America, and Bertelsmann, Inc.*, Case No. BC343385, filed in Superior Court for the State of California, County of Los Angeles on November 21, 2005;
- Exhibit 16: Letter dated November 30, 2005 from Cindy Cohn of EFF and Robert J. Green of Green Welling LLP to Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “MediaMax Security Vulnerability”;

- Exhibit 17: E-mail dated November 30, 2005 at 5:27:25 PM PST from Cindy Cohn of EFF to Jeffrey P. Cunard at Debevoise & Plimpton LLP regarding "Security Vulnerability: Delay on public release";
- Exhibit 18: E-mail dated November 30, 2005 at 5:38:47 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding "Security Vulnerability: Delay on Public Release";
- Exhibit 19: E-mail dated November 30, 2005 at 8:44:37 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding "MediaMax Access Control Vulnerability report," and attaching November 29, 2005 report entitled "Media Max Access Control Vulnerability" prepared by Jesse Burns and Alex Stamos of Information Security Partners LLC";
- Exhibit 20: An e-mail dated December 1, 2005 at 11:24:46 AM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding "Security Vulnerability: Delay on public release";
- Exhibit 21: An e-mail dated December 2, 2005 at 4:44:27 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding "sony security question";
- Exhibit 22: An e-mail dated December 3, 2005 at 10:44:33 AM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Kurt Opsahl at EFF regarding "sony security question";
- Exhibit 23: A letter dated December 6, 2005 from Cindy Cohn at EFF and Robert S. Green at Green Welling LLP to Jeffrey P. Cunard at Debevoise & Plimpton LLP regarding "Sony BMG";
- Exhibit 24: Joint press release issued December 6, 2005 from EFF and Sony BMG Music Entertainment;
- Exhibit 25: An e-mail dated December 21, 2005 at 11:48:17 AM PST from Paul Singer at the Office of the Texas State Attorney General to Cindy Cohn at EFF regarding "EFF: SunnComm Makes Security Update Available to Address Recently Discovered Vulnerability on Its MediaMax Version 5 Content Protection Software";
- Exhibit 26: An e-mail dated December 30, 2005 at 8:00:43 AM PST from Cindy Cohn at EFF to Paul Singer at the Office of the Texas State Attorney General regarding "Final version of the class action settlement";
- Exhibit 27: An e-mail dated January 4, 2006 at 9:57:25 AM PST from Cindy Cohn at EFF to Paul Singer at the Office of the Texas State Attorney General regarding "Sony BMG";

- Exhibit 28: An email dated December 9, 2005 11:10:43 AM from Cindy Cohn of EFF to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP regarding “settlement draft?”;
- Exhibit 29: A letter dated December 9, 2005 from Robert S. Green of Green Welling LLP to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP and Scott A. Kamber of Kamber & Associates, LLC regarding “Sony BMG”;
- Exhibit 30: An e-mail dated December 11, 2005 at 12:05:24 PM from Cindy Cohn at EFF to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP regarding “A Monday Meeting”;
- Exhibit 31: Thomas Claburn and Gregg Keizer, “Sony Plays The Blues As Bloggers Turn Up The Volume – Company halts sales of CDs with content protection software after complaints,” *Information Week*, Nov. 21, 2005, at 28;
- Exhibit 32: An email dated December 20, 2005 at 9:10:21 AM PST from Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP to Cindy Cohn at EFF regarding “CMC and notice and other docs”;
- Exhibit 33: An e-mail dated December 28, 2005 at 4:46:48 PM PST from Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP to Cindy Cohn of EFF regarding “Unfinished Settlement Matters”;
- Exhibit 34: An e-mail dated February 3, 2006 at 7:02:49 PM PST from Cindy Cohn of EFF to Jeffrey S. Jacobson and Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “Delegation agreement discussions”;
- Exhibit 35: A letter dated February 3, 2006 from Robert M. Rothman of Lerach Coughlin Stoia Geller Rudman & Robbins LLP to the Hon. Naomi Reice Buchwald, United States District Judge, regarding *In re Sony BMG CD Technologies Litigation*;
- Exhibit 36: An e-mail dated February 3, 2006 12:39 PM from Jeffrey S. Jacobson to Scott A. Kamber of Kamber & Associates, LLC, Daniel Girard and Aaron Sheanin of Girard Gibbs & De Bartolomeo LLP, Cindy Cohn and Kurt Opsahl of EFF, Robert S. Green and Jenelle W. Welling of Green Welling LLP, Jeff Friedman of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, and Bruce P. Keller and Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “Judge Buchwald request”;
- Exhibit 37: A printout from the website of Computer Associates, regarding the Sony Rootkit Patch, available at <http://www3.ca.com/securityadvisor/pest/pest.aspx?id=4530963625> (last visited December 1, 2005);
- Exhibit 38: A printout from the website of the United States Computer Emergency Readiness Team (“US-CERT”), part of the Department of Homeland

Security, available at http://www.us-cert.gov/current/current_activity.html#xcpdrm (last visited December 4, 2005);

- Exhibit 39: “Vulnerability Summary CVE-2005-4069” from the National Cyber-Alert System ranking SunnComm MediaMax software with a vulnerability rating of 4.9 (medium), available at <http://nvd.nist.gov/nvd.cfm?cvename=CVE-2005-4069> (last visited March 30, 2006);
- Exhibit 40: “Vulnerability Summary CVE-2005-3474” from the National Cyber-Alert System ranking XCP software with a vulnerability rating of 5.6 (medium), available at <http://nvd.nist.gov/nvd.cfm?cvename=CVE-2005-3474> (last visited March 30, 2006);
- Exhibit 41: Rick Merritt, “Music mavens change tune,” *EE Times*, dated August 15, 2005, available at <http://www.eetimes.com/showArticle.jhtml?articleID=168601279> (last visited March 31, 2006);
- Exhibit 42: A November 4, 2005 transcript from National Public Radio, Morning Edition, entitled “Analysis: Sony music CDs under fire from privacy advocates”;
- Exhibit 43: A detailed description of contemporaneous time records, including the date, hours expended and the nature of work done by attorneys and staff members at my firm on this case; and
- Exhibit 44: A detailed description of expenses incurred by Lerach Coughlin Stoia Geller Rudman & Robbins LLP pertaining to this case.

4. The total number of hours spent on this litigation by my firm is 454.25. The total lodestar amount for attorney/paralegal time based on the firm’s current rates is \$190,322.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

Time Report from Inception through 03/27/2006

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Kathrein, Reed R.	(P)	116.50	575	66,987.50
Rothman, Robert	(P)	74.50	425	31,662.50
Rudman, Samuel H.	(P)	0.25	550	137.50
Stein, Jonathan	(P)	0.75	475	356.25
Scarlett, Shana E.	(A)	61.25	325	19,906.25

Friedman, Jeffrey D.	(OC)	132.50	425	56,312.50
Paralegal I		7.75	245	1,898.75
Paralegal III		60.75	215	13,061.25
TOTAL:		454.25		190,322.50

(P) Partner

(A) Associate

(OC) Of Counsel

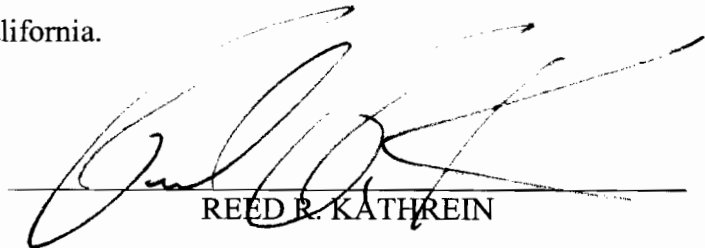
5. My firm incurred a total of \$31,273.62 in unreimbursed expenses in connection with the prosecution of this litigation. They are broken down as follows:

Expense Report from Inception through 03/27/2006

DISBURSEMENT	TOTAL
Meals, Hotel & Transportation	3,638.78
Photocopies	725.50
Telephone & Facsimile	379.54
Messenger & Federal Express	134.42
Filing, Witness & Other Fees	679.55
Lexis, Westlaw & Online Library Research	3,414.55
Experts, Consultants & Investigators	22,045.00
Special Secretarial & Word Processing	256.28
TOTAL:	\$31,273.62

6. The expenses incurred pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of April, 2006, at San Francisco, California.



REED R. KATHREIN